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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 644 (KBF)

5 JESUS RODRIGUEZ JIMENEZ,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.
August 14, 2018
1:05 p.m.

10
11 Before:

12 HON. KATHERINE B. FORREST,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 NOAH FALK

Assistant United States Attorney

18 LOUIS V. FASULO

19 JEFFREY COHN

GUADALUPE VALENCIA

Attorneys for Defendant

20
21 ALSO PRESENT: DAVID BEHAR, Special Agent DEA
MARK LANG, Special Agent DEA
22 ERIKA DE LOS RIOS, Interpreter (Spanish)
MARCIA GOTTER, Interpreter (Spanish)

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(Case called)

MR. FALK: Good afternoon. Noah Falk, for the government. With me at counsel table is Special Agent David Behar and Special Agent Mark Lang of the DEA.

THE COURT: All right. Good afternoon, folks.

MR. FASULO: Good afternoon. Louis Fasulo, Fasulo Braverman & DiMaggio, along with my client, Mr. Rodriguez.

MR. VALENCIA: Guadalupe Valencia, on behalf of Mr. Rodriguez.

MR. COHN: Jeffrey Cohn, also on behalf of Mr. Rodriguez.

MR. FASULO: Just for the record, also at the counsel table is my paralegal Icelsa Gonzalez.

THE COURT: I recognize Ms. Gonzalez from several proceedings.

Mr. Valencia, have you filed a notice of appearance? You have?

MR. VALENCIA: Yes, your Honor. I appeared at the first hearing, and I filed a notice back then.

THE COURT: Terrific.

MR. VALENCIA: Thank you, your Honor.

THE COURT: The Court notes that Mr. Rodriguez is here and present.

We're here today for the sentencing of Mr. Jesus Rodriguez-Jimenez, and I want to make sure that I state a

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1 couple of things on the record which indicates why we are here
2 in August of 2018 for a plea that occurred back in September of
3 2017.

4 Mr. Fasulo.

5 MR. FASULO: I'm sorry, Judge. I just want to put on
6 the record the interpreter part. We have the interpreter and
7 Mr. Rodriguez can hear.

8 THE COURT: Sure. Yes, there is a Spanish interpreter
9 for Mr. Rodriguez. I see that you're wearing the equipment,
10 sir. Can you hear the translation?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. If at any point in time you
13 can't hear the translation or if you don't understand something
14 that's being said, just make a motion or indicate it to one of
15 your attorneys or make a motion to me, and we'll get that fixed
16 immediately. All right?

17 THE DEFENDANT: OK.

18 MR. FASULO: Thank you, Judge.

19 THE COURT: Thank you.

20 I wanted to set forth for the record why we are in a
21 sort of an unusual position where the plea occurred quite a
22 long time ago, but we're sentencing Mr. Rodriguez only right
23 now. The reason for that is there had been a period of time
24 that extended, as I understand it, until late into the spring
25 when there had been a series of proffers by

I8EHRodS

1 Mr. Rodriguez-Jimenez looking towards the possibility of a
2 cooperation agreement. That did not result in a cooperation
3 agreement. All of that, the back and forth on the proffers, is
4 set forth in the filings, and so I wanted to just indicate that
5 that really took up a substantial chunk of time.

6 As a result, Mr. Jesus Rodriguez-Jimenez has been in
7 custody for almost two years at this point, since 2016. The
8 PSR actually has the exact timing, so I don't want to, yes, get
9 it wrong. He was arrested in Nevada on July 1, 2016, and then
10 transferred to federal custody in the Southern District on
11 July 27, 2016. So it has been actually a little over two
12 years.

13 The way that I typically start these proceedings is to
14 set forth for the record the counts of conviction and then also
15 the materials that I've received and make sure that I've got
16 what you folks think I should have.

17 Mr. Cohn.

18 MR. COHN: Yes, your Honor. Just in conjunction with
19 what your Honor said about the timing and to complete the
20 record as regards to the timing of today's proceeding, the
21 sentencing, we put in a request for an adjournment on, I
22 believe, July 30, a day or two -- or maybe it was the 29th, a
23 day or two before our submission was due, our initial
24 submission. The reason for that request was that pursuant and
25 as a result of these proffers that your Honor referred to,

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1 there was some evidence or materials generated which we sought
2 to have an expanded period of time to evaluate. There were
3 reams, many pages of documents Mr. Rodriguez-Jimenez provided
4 to the government and the recordings of consensual
5 conversations that he made under the supervision of the DEA.
6 It was our intention and contention that these materials were
7 relevant to basically proving the value of the assistance he
8 was providing, despite some earlier misstarts in his
9 cooperation. Your Honor denied that request without
10 explanation.

11 And just to complete the record, because it has now
12 ripened into, as your Honor can see in the filings, a bone of
13 contention about the value of that, we'd like your Honor to put
14 on the record the reason for the denial of that when we only
15 received those materials the day that we filed the request.

16 THE COURT: Yes, I have no problem stating why it is
17 important to sentence an individual in a timely way. I think
18 that the sentencing here has gone on -- Mr. Rodriguez-Jimenez
19 pled guilty almost a year ago, and not sentencing him now
20 gravely concerns the Court. In fact, sentencing him in August
21 gravely concerns the Court. I wish I had sentenced him as soon
22 as the proffer sessions had ended, but the PSR process takes
23 some time.

24 I am not ever particularly concerned with why the
25 government chooses or does not choose to engage in a

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1 cooperation agreement. That's a prosecutorial decision that
2 they are entitled to make; and, therefore, the government is
3 fully entitled to have made a determination that, in its view,
4 the information was not reliable. That's a unilateral decision
5 which it's entitled to make. Frankly, the basis for my
6 decision on sentencing relates to the conduct of conviction and
7 not to the various matters that were or were not raised during
8 the proffers in terms of the materials that were at issue in
9 your letter.

10 Therefore, investigation, further investigation into
11 those materials is really an irrelevancy in terms of this
12 Court's ultimate sentencing determination, and a delay and an
13 adjournment would therefore not have been something which was
14 in the interests of justice. However, we'll go through a
15 couple of things to just make sure that there is no need for a
16 *Fatico*. I'll be clear that I don't believe there is because I
17 think that where I see the points of dispute are things upon
18 which I need not rely in order to reach a sentencing
19 determination and do not intend to rely. But if something
20 comes up that you believe, Mr. Cohn, does require a *Fatico*, you
21 should make sure that we state it. But, again, it is not a
22 sentencing issue for the Court that the government has
23 unilaterally chosen not to engage in a cooperation agreement.
24 That's just their prerogative.

25 MR. COHN: Thank you, your Honor.

I8EHRods

1 Just to complete the record on that, our position is
2 that the materials that we were pressed in time to evaluate
3 were relevant under Section 3553(a) factors. I believe there
4 have been appellate decisions in which the higher courts have
5 said, in substance, a failed cooperation, to paraphrase, can be
6 used as a 3553(a) factor, and these materials that we sought
7 time to review, we believe, would have been materials that we
8 could have used had we had the time requested to make more full
9 arguments on 3553(a).

10 THE COURT: Let me then assuage your concern this way,
11 which is I accept fully and I do take it into consideration and
12 have taken it into consideration that the defendant was
13 proffering actively and met with the government on a number of
14 occasions. I accept that. I take that into consideration. I
15 think that it is important to note, for the record, that the
16 Court has considered that as a mitigating factor in terms of
17 the overall conduct.

18 So do not concern yourself that the Court somehow
19 undervalues or devalues his cooperation. The fact, however,
20 remains that he did not ultimately end up in a position where
21 he has a 5K agreement or a cooperation agreement with the
22 government that resulted in a 5K letter. That is, again,
23 something to the unilateral discretion of the prosecution. So
24 it is not a matter of any inability to raise a 3553(a) factor.
25 There are a number of areas already set forth in the defense

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1 submission as to areas of proffer with which the government
2 hasn't taken issue. There are, however, a couple of points of
3 dispute. Primarily the one that I want to explore is the time
4 frame of the unlawful conduct. That, I think, actually comes
5 out through the PSR because the PSR itself has the time frame
6 in it, and so that may resolve any issues. But the fact of
7 potential proffering and of a number of areas that may have
8 otherwise been useful to the government in some ways, but
9 ultimately, the inability or decision by the government not to
10 give cooperation, I think, is in their discretion.

11 So it's not that I'm not taking it into consideration
12 and giving the defendant credit for it. I certainly am.
13 That's why, and the only reason why, I would allow a sentencing
14 to have gone on and have taken this long. In fact, my normal
15 practice, of course, is to sentence defendants almost
16 immediately after receiving the PSR and getting the
17 information. I would almost never have allowed a sentencing to
18 have gone on this long. The reason for it was because we
19 actively ensured that we were monitoring that there were
20 ongoing proffers. So for those reasons, I am confident that we
21 are able to proceed today without issue.

22 I also will note that I have a familiarity with this
23 record and familiarity with this overall matter. As you folks
24 know, I sentenced Mr. Urbina. I also was the judge who
25 presided over the deferred prosecution agreement. We've had a

I8EHRodS

1 number of proceedings. So it is useful for me to now complete
2 the process, given my particular information on this. So let's
3 go and go through the various things that I would like to do
4 right now which relate to the counts of conviction and what
5 I've received.

6 Count One, the defendant pled guilty to two counts, to
7 Count One, which carries a ten-year maximum sentence, and Count
8 Three, which carries a 20-year maximum sentence. Count One is
9 a conspiracy to engage in monetary transactions in criminally
10 derived property, and Count Three is concealment money
11 laundering.

12 Now, there are several submissions that I've received
13 in connection with this proceeding: A defense submission dated
14 July 31, 2018, attached to which are a number of letters.
15 Actually, altogether, between that and the August 8, 2018,
16 submission are several dozen letters. There's also a sealed
17 submission dated August 12, 2018. The government then made a
18 submission dated August 7, 2018, and a second submission
19 responding to the August 12 submission from the defense. That
20 second government submission is August 13, 2018. The Court is
21 working with the presentence investigation report that is dated
22 May 7, 2018. That is a revised report based upon the
23 objections that had been received to date.

24 Let's start with whether there are other materials
25 that I should be looking at that you folks believe you have

I8EHRods

1 submitted in connection with this proceeding at this point.

2 Mr. Falk?

3 MR. FALK: That's all from us, your Honor.

4 THE COURT: Mr. Cohn?

5 MR. COHN: Nothing else from the defense, your Honor.

6 THE COURT: All right. Then let's go through the PSR
7 and determine whether there are any objections to the factual
8 statements in the PSR.

9 As you folks understand, the Court does not adopt a
10 sentencing recommendation from probation. That's not part of
11 what the Court adopts and incorporates by reference. The Court
12 right now is focused on the factual statements in the PSR and
13 whether there are objections to or modifications that you folks
14 believe need to be made to the PSR. The Court reviews a
15 sentencing recommendation from probation, but ultimately the
16 Court is required to and does make its own independent
17 sentencing recommendation -- sentencing decision for every
18 defendant based upon a review of a variety of things, including
19 sentencing recommendations from counsel as well as probation.

20 Mr. Falk, are there any objections to or modifications
21 that you believe need to be made to the PSR?

22 MR. FALK: Not from the government.

23 THE COURT: All right. Then let me ask Mr. Cohn, have
24 you reviewed the PSR with your client?

25 MR. COHN: I have, your Honor.

I8EHRods

1 THE COURT: Do either you or your client have any
2 objections to or modifications to be made to the PSR?

3 MR. COHN: No, your Honor.

4 THE COURT: Was the PSR translated for your client?

5 MR. COHN: Yes, your Honor.

6 THE COURT: The Court then does adopt the factual
7 statements set forth in the PSR. The PSR will be made part of
8 the record and filed under seal. If an appeal is taken, then
9 counsel on any appeal may have access to the PSR without any
10 need for further application to the Court.

11 Now, let's talk about the one issue that I think is
12 something that I want to make sure that I am able to reference
13 in my sentencing determination, which is what I think is
14 important to take away in terms of the time frame of the
15 defendant's conduct. I do understand that during the proffer
16 session there was one time frame that was referenced and that
17 the government takes issue with the more recent statements in
18 the defense submission about a different time frame. And we'll
19 get to the guidelines in a moment, by the way, I haven't
20 forgotten about those.

21 It is my view that what's important are two things
22 which don't require me to land on a particular date.
23 Therefore, I don't believe that it's necessary for me to
24 determine whether or not it's 2011 or 2015. Those two things
25 are the following: (1) That the defendant as part of his plea

I8EHRodS

1 agreement agreed to forfeit the proceeds traceable to the
2 offenses of conviction in the amount of \$284 million. That
3 amount is suggestive of a particular ongoing set of criminal
4 conduct. I am content to have it be a couple of years. That
5 to me is sufficient. I don't need to necessarily get down to
6 the nitty-gritty of whether it was a six-year period or a
7 five-year period. The \$284 million gives me an array, an
8 indication as to the magnitude of the conduct. The date is
9 simply a proxy for magnitude; and, therefore, I don't think
10 that we should tarry on the date.

11 I also would note that there are indications in the
12 PSR that the conduct was at least as of, in terms of the
13 overall conspiracy, 2013. I would look at paragraphs 19 *et*
14 *seq.* for that information, though a variety of the more
15 specific conduct, which I'm focused on for Mr. Jesus
16 Rodriguez-Jimenez, is 2014/2015. That's really what I was
17 focused on. Otherwise, while there is more detail in terms of
18 the government submission and the defense submission, my
19 takeaway is not to get into the nuances of those submissions,
20 apart from really focusing on what's in the PSR.

21 Let me ask, Mr. Falk, does the government have any
22 issue with the Court proceeding in that manner?

23 MR. FALK: We don't, your Honor. I think that that
24 approach makes a lot of sense, and the government agrees that,
25 really, the key number here is the forfeiture number of

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1 \$284 million which, in the government's view, reflects a
2 long-running scheme regardless of whether it began in 2011 or
3 2013.

4 THE COURT: Let me ask, then, defense counsel, do you
5 have any problem with me proceeding in that manner?

6 MR. COHN: Not only do we not have any problem, but as
7 I will make clear in our sentencing remarks, nothing in our
8 submissions was meant to dispute the admissions that
9 Mr. Rodriguez made in the proffers, and I'll expand upon that
10 later.

11 THE COURT: OK.

12 MR. COHN: Not only do we not have a problem, in
13 essence, with the time frame in the beginning, we're in
14 agreement with the government.

15 THE COURT: So I can lose the 2011 date, it sounds
16 like.

17 MR. COHN: That's correct.

18 THE COURT: All right. That eliminates that. I don't
19 view the other particular factual matters where there are
20 disputes between the submissions as important or underlying the
21 Court's sentencing determination in any way. I really am
22 focused on those matters as to which the PSR has the factual
23 statements, and we'll hear what Mr. Cohn has to say during his
24 sentencing remarks for further details where there may be no
25 points of dispute.

I8EHRodS

1 Then the guidelines. I don't think we should also
2 spend any time really on the guidelines. There were guidelines
3 set forth at the time of the plea that were in excess,
4 effectively, of the statutory maximum. That under the
5 guidelines brings it down to, pursuant to the guidelines, the
6 statutory maximum of 360 months. Therefore, while there are a
7 number of ways in which we could slice and dice certain
8 enhancements or not and we could talk about whether there was,
9 in the government's view, a need for withdrawal of acceptance
10 of responsibility or obstruction of justice, I don't think we
11 have to get to any of that because the way in which the
12 guidelines were calculated as part of the plea agreement put us
13 at the same point as probation.

14 The Court is content with what probation has done,
15 which essentially brings it down to 360 months, because the
16 guidelines otherwise would be at a level that exceeds the
17 statutory maximum. So I don't think that there's any need to
18 go into the disputes that the parties might otherwise have with
19 particular pieces of a guidelines calculation that otherwise
20 could be done. In other words, in short, the Court is content
21 to adopt the guidelines calculation as set forth in the plea
22 agreement.

23 Any dispute with that, Mr. Falk?

24 MR. FALK: No. That works for us, your Honor.

25 THE COURT: Mr. Cohn, any dispute with that?

I8EHRodS

1 MR. COHN: No, your Honor.

2 THE COURT: The Court, then, does confirm the
3 guideline calculation as 360 months, which is the statutory
4 maximum sentence. I therefore eliminate any disputes relating
5 to the guidelines that might otherwise be brought forward on
6 any appeal.

7 Let's go ahead and turn our attention to really what
8 is the main point of getting beyond those first preliminary
9 matters, which is to talk to folks about what you would like to
10 have my attention be focused on here today. The way I start is
11 with the government; then defense counsel; then if the
12 government needs to comment, they can comment; and then
13 ultimately the defendant, if he would like to address the
14 Court, gets the last word in my courtroom.

15 Let's start, then, Mr. Falk, with you.

16 MR. FALK: Thank you, your Honor.

17 The government wants to bring to the Court's attention
18 just the incredible seriousness of the conduct at issue here.
19 In the government's view, this scheme, which was long running
20 whether the Court credits the defendant's view that it began in
21 2015 or the government's view that it began in 2011, whatever
22 the case, it was --

23 THE COURT: They're now agreeing with you that it can
24 be 2011. I think that Mr. Cohn has eliminated that as a basis
25 for a factual dispute.

I8EHRods

1 MR. FALK: Well, I will take that.

2 But in any event, it's just incredibly serious
3 conduct. We're talking about essentially the defendant was the
4 CEO of a shadow banking network that facilitated the
5 distribution of massive amounts of narcotics, among other
6 criminal activity, in over three continents. And he leveraged
7 a web of shell corporations, couriers, and other seemingly
8 legitimate businesses and devices in order to facilitate
9 essentially a banking network for narcotics traffickers. It
10 allowed their activity to occur on a massive scale, and I don't
11 think anybody in the courtroom would dispute the indelible harm
12 that that level of narcotics trafficking causes to communities,
13 both here in the United States, in Mexico, in Europe, and
14 throughout the continents that were touched by the defendant's
15 conduct. All told, the defendant acknowledged that his
16 laundering network facilitated the laundering of over
17 \$300 million in narcotics and other criminal proceeds.

18 So, really, that conduct, that is what I would like to
19 focus the Court on. It seems to me that the statements that
20 were made in the defendant's sentencing submission indicating
21 that he thought that it was OK to engage in this kind of
22 conduct because he never touched drugs, he just touched the
23 money, those minimizations should not be credited by the Court.
24 The government has had a lot of opportunity to debrief the
25 defendant. We've heard a lot from him, and as we have laid out

I8EHRodS

1 in our submissions to the Court, it's clear to us that the
2 defendant is incapable of consistent honesty, is incapable of
3 understanding the scope of the damage that this enterprise has
4 caused, and that a significant sentence is warranted in light
5 of the severity of the conduct.

6 If the Court has any questions for me, I'm happy to
7 respond; otherwise, I will rest on the submissions.

8 THE COURT: Thank you.

9 I think right now I do not have any additional
10 questions. Let's just hear from Mr. Cohn.

11 MR. COHN: Yes, your Honor. First, to address what
12 Mr. Falk said, I think right there you can see one of the
13 problems that we've been experiencing. In the run-up to our
14 remarks right now, I conceded that the conduct started in 2011
15 because my client conceded that, and that's in fact what
16 happened. Mr. Falk just stood up and again tried to say that
17 we were perpetrating, in essence, in practicality, an untruth
18 by saying it was 2015/2016. It's that kind of lack of
19 intellectual rigor which I think has caused a lot of disputes
20 in this case.

21 First of all, to address the government's letter of
22 2013, of August 13, yesterday, that's where a lot of that comes
23 from. It misapprehended our August 12 submission. I never
24 said that the conduct was one to two years. What I said was
25 that, in the government's August 7 submission and in fact in

I8EHRodS

1 the PSR, they were talking about a long-running conspiracy
2 without going into the facts underlying those adjectives. That
3 is a fault in the logic of a submission, not a dispute of the
4 facts of the submission. I was not saying it was a one- to
5 two-year conspiracy. In fact, my actual wording in my
6 submission was it was a confused narrative that apparently
7 relied on it. And I invite the Court and Mr. Falk to point out
8 to me in their August 7 submission whether they went into
9 anything before 2015.

10 So the point was not that this was a one- or two-year
11 conspiracy. Obviously, our client admitted it started in 2011,
12 and he should be credited with that. The point was in their
13 August 7 submission, they kept saying long running, long
14 running, but when it came time to talk about dates, they only
15 talked about 2015 to 2016. And I think that is a hallmark of
16 the submission.

17 The other thing that Mr. Falk said again in his
18 remarks and talked about in yesterday's submission was somehow
19 that there was a dishonesty by Jesus in saying that his
20 rationale for getting into this was that he was never touching
21 the drugs. Well, there is no drug dealing or involvement in
22 drug dealing by Jesus between 2011 and 2014 directly. He did
23 admit on two occasions, after being in business with these drug
24 dealers for three years, that he did allow his trucks and made
25 money from moving drugs on two occasions, but in the context of

I8EHRodS

1 a six-year -- five-year, actually, group of activity, to say
2 that I got into it initially by deceiving myself that I was not
3 involved with drugs, that doesn't make him a liar that three
4 years later he did drug deals which he candidly admitted he did
5 for money.

6 Getting back to what I know is your Honor's main
7 point, the conduct and the appropriate sentence, the conduct in
8 the PSR, the PSR does not mention Jesus until, I think, about
9 ten or 15 paragraphs into the conduct, the offense conduct in
10 this case. And when it does mention him, it only mentions him
11 in relation to nonviolent money transactions because, really,
12 your Honor, that's as much as the conduct, which I know your
13 Honor wants to focus on, who no one disputes is very serious,
14 it is very serious conduct, but what we're really talking about
15 here is what does that conduct mean as far as what sentence is
16 necessary and not greater than necessary? If you really
17 analyze that part of 3553(a), there needs to be some, in a
18 court, evidentiary support for the sentence that the government
19 is asking for, some anecdotal evidence, some social science
20 evidence. Why is this sentence, which is an extremely heavy
21 sentence for a first-time, nonviolent offender, why is that
22 necessary? Is there any reason to believe, based on everything
23 we all know about the way the criminal justice system works,
24 that long sentences equate to deterrence specifically,
25 deterrence generally? There's nothing. There's really nothing

I8EHRods

1 that we can point to that says that this amount of time, or
2 anything close to it, is necessary, which is the mandate of
3 3553(a).

4 Now, the PSR, which I know your Honor wants to focus
5 on, has in accord with our submissions the facts that this is a
6 man who will be 48 years old tomorrow. The letters, your
7 Honor, describe the same fact pattern time after time. He
8 helps people get education. He takes care of children for whom
9 he has no moral responsibility. This is the person that you're
10 sentencing, your Honor.

11 I know the conduct is serious. I'm going to repeat it
12 as much as I have to because we don't deny that, but that's not
13 the only thing. I submit to you there is a host of other
14 factors where, even if they're not equal in importance, are
15 very important under the framework of 3553(a): nonviolent
16 first-time offender; a man who's filled his life, according to
17 the dozens of letters, with good deeds. We had 27 or 23 items
18 of assistance which the government itself characterized in its
19 letter yesterday as significant, that they didn't dispute.

20 By the way, your Honor, some of those documents that
21 we sought to amplify in our review, those were documents that,
22 whether or not the government trusts Mr. Rodriguez-Jimenez,
23 those documents prove beyond a shadow of a doubt what he was
24 saying as regards various criminality. I'm not going to go
25 over the point-by-point recitation, but as your Honor noted at

I8EHRodS

1 the top, and I'm sure your Honor read the submission, it's
2 substantial and, as the government put it, significant
3 information. Most, perhaps, important as regards the
4 defendant's intention -- and we tried to lean on this in our
5 letter and I would like to repeat it at the risk of being
6 repetitive today -- is the defendant's offer to turn in his own
7 younger brother who by your Honor's, I'm sure, thorough
8 analysis of the PSR was the main drug mover in this case and
9 remains a fugitive.

10 It's a really strange thing to me that, as I said at
11 the top, in a scheme where we require evidence to make our
12 conclusions in courts, that there is traditionally and in this
13 case specifically no evidence about, again, anecdotally or in a
14 social science sense, why a certain time is sufficient rather
15 than greater than necessary. I know it's not susceptible to a
16 precise analysis. Every case is different. Every person's
17 different. It's difficult to say. But certainly, if I were
18 sitting where your Honor were sitting, if I was being asked to
19 impose this amount of time on a first-time nonviolent offender,
20 a man who stands before this Court with no mandatory minimum,
21 with acknowledgment of his criminal activity, there should be
22 something you can point to and say, Look, if I give him this
23 sentence, this will be the result. Other than our own
24 personalities which we bring to bear on that question, there
25 really is nothing.

I8EHRods

1 So when we analyze the undisputed facts, without again
2 disputing the seriousness of the conduct, the sentence that the
3 government's asking for is just patently ridiculous. That
4 sentence should be reserved for only the most violent people,
5 only the people directly convicted of narcotics offenses at the
6 highest level. And even then, if they were nonviolent, I would
7 submit that there would be a problem for that kind of sentence
8 for a first-time 48-year-old man when your Honor, I know, takes
9 into account the significant, in the government's words,
10 information that the defendant provided; the fact that there
11 are all these dozens of letters attesting to his character; the
12 fact that he has the intelligence to be rehabilitated which,
13 after all, is another one of the factors of 3553(a). We submit
14 to you that a sentence far, far below, one in the range that we
15 advocated in our submission, is the appropriate sentence to
16 conform to 3553(a)'s requirement of sufficient but not greater
17 than necessary.

18 THE COURT: All right. Thank you.

19 Mr. Rodriguez-Jimenez, would you like to address the
20 Court before sentence is imposed?

21 THE DEFENDANT: Yes.

22 THE COURT: Yes, you can certainly turn that
23 microphone towards you. Thank you, sir.

24 MR. VALENCIA: Your Honor, do you want
25 Mr. Rodriguez-Jimenez to stand?

I8EHRods

1 THE COURT: Whatever you're most comfortable doing.
2 Sometimes people are. It's nice if you stand, but if it's more
3 comfortable to sit, I will take no offense.

4 THE DEFENDANT: Well, initially, I would like to say
5 that I know that nothing I say here is going to change the
6 decision that your Honor decide to make.

7 THE COURT: Well, let me just also say that I always
8 listen to what the defendant has to say prior to making an
9 ultimate sentencing determination. That is part of what I take
10 into consideration as a totality of facts and considerations in
11 my determination.

12 THE DEFENDANT: Thank you.

13 I would like to express to you that I am very aware of
14 the wrongdoing I have committed. I have been able to see how
15 far-reaching these crimes have gone. And I would just like to
16 say that if you allow me to reintegrate myself into society and
17 work for myself and my family, I will not commit any other
18 criminal acts. And I'd just like to say that I have the desire
19 and the strength to reintegrate myself into society and to
20 achieve the goals that I had before getting into this trouble.
21 That is it.

22 THE COURT: Thank you.

23 THE DEFENDANT: Thank you.

24 THE COURT: Thank you.

25 All right. Mr. Falk, you're looking at me

I8EHRods

1 expectantly. Is there something else? Normally, I just have
2 the defendant say the last word and have you comment before
3 that. Is there something you feel you wanted to say?

4 MR. FALK: I understand, your Honor. I would just
5 like to respond very briefly to some of the items that Mr. Cohn
6 raised if you'll permit me.

7 With respect to his assertions that Mr. Rodriguez is
8 completely nonviolent, I think that that's belied by the
9 description of the conduct that's contained in our letter with
10 respect to his codefendant Sergio Urbina. Whether or not that
11 was specifically violent behavior, the occurrence that happened
12 with respect to Mr. Urbina was certainly backed by the threat
13 of violence, and I think it's only a matter of luck that
14 Mr. Urbina was able to escape that situation intact, given that
15 he was essentially kidnapped by the defendant.

16 THE COURT: Let me just say this so that it is
17 absolutely clear that there is no factual dispute that is
18 meaningful to the Court's imposition of a sentence so that we
19 don't need a *Fatico* hearing on this issue. It is not important
20 to the Court's decision that there has been any violence. I am
21 willing to accept and I do accept for purposes of the
22 sentencing proceeding that Mr. Jesus Rodriguez-Jimenez is a
23 nonviolent individual. I understand the government's point
24 that they believe they have information on it; however, that
25 would be disputed by the defense and therefore could create a

I8EHRodS

1 factual issue.

2 I don't think there's any reason for me to need to go
3 there. What I am really focused on is the money laundering,
4 both the concealment and the transaction, both Counts One and
5 Counts Two -- sorry, Counts One and Counts Three, there are two
6 counts, not on that conduct. So I appreciate your reference to
7 it. I should tell you that I am going to ignore that
8 situation.

9 MR. FALK: Thank you, your Honor.

10 With respect to another reason why a significant
11 sentence is warranted here, the defendant says if he gets out,
12 he will be reintegrated into society. Let me just say that the
13 government is aware that the defendant's money laundering
14 operation and network is still intact to a certain extent, and
15 from our perspective, what an insignificant sentence would mean
16 is that the defendant would be back doing the very same thing
17 that got him here in the first place in very short order. So
18 that is another reason that we feel that a significant sentence
19 is warranted in this case.

20 Finally, with respect to the significant information
21 provided by the defendant, we agree that he provided voluminous
22 information. However, the usefulness of that information, as
23 pointed out in our sentencing submission, is dubious at best
24 given its source. That includes documents that were provided
25 by the defendant.

I8EHRods

1 THE COURT: All right.

2 MR. FALK: Thank you.

3 THE COURT: Let me again, I just want to repeat one
4 thing, which is I am not concerned here today with the reasons
5 why the government chose not to give the defendant a
6 cooperation agreement. The government always has the
7 unilateral ability in its own prosecutorial discretion to
8 choose with whom it wants to engage in a back-and-forth and
9 cooperative endeavor, and the government here chose that it was
10 not going to exercise its prosecutorial discretion.

11 I also accept, however, I just want to repeat this,
12 that the defendant did, in fact, proffer on a number of
13 occasions. I also accept that there was a variety of
14 information that, had the government wanted to pursue a
15 cooperation agreement, could have been useful and may still
16 have been useful. That's part of what a proffer does. It
17 sometimes presents the government with useful information which
18 does not result in a cooperation agreement. That's one of the
19 ways in which that process works. There are no guarantees as
20 part of the back-and-forth proffering.

21 Just to make it absolutely clear, the Court's
22 sentencing determination does not take into consideration or
23 depend upon the reliability, or lack of reliability, in terms
24 of what the government has proffered. I will accept what the
25 defense has said in terms of there was substantial information

I8EHRodS

1 provided to the government. That doesn't change the fact that
2 the government did not choose to give a cooperation agreement.
3 That, in the Court's view, eliminates any issue with regard to
4 the timing of this proceeding and whether or not there's any
5 need to delve into reliability or lack of reliability or things
6 of that nature.

7 All right. Mr. Cohn.

8 MR. COHN: Your Honor covered 90 percent of what I
9 wanted to respond to, but the other 10 percent is Mr. Falk says
10 that there's criminal activity that is going on out there, and
11 he believes that means the defendant would rejoin that
12 activity. There's no evidence to support that.

13 THE COURT: All right. Let me, then, go to what my
14 sentencing determination, the basis for it is. Certainly, I am
15 a very committed believer to the Court always setting forth its
16 sentencing determination and its rationale, and I've done that,
17 I hope, in every sentencing proceeding and will do it here.

18 The Court is required to take into consideration the
19 sentencing guidelines. That's one of the things that a judge
20 is always required to take into consideration. I am not bound
21 by the guidelines here in terms of being required to impose a
22 particular sentence. The guidelines are advisory only. In
23 this particular situation, neither Count One nor Count Three,
24 the two counts of conviction, neither count carries any kind of
25 mandatory minimum sentence. Therefore, I have discretion to

I8EHRodS

1 determine what the appropriate sentence is.

2 With that said, the Court does look at the guidelines
3 as presenting a potentially reasonable sentence. It is up to
4 me then, in applying the various sentencing factors under
5 3553(a), to determine whether, in fact, the guidelines for the
6 circumstances here and the defendant's own history and
7 characteristics here merit such a sentence. But I will say
8 that, in general, I am of the view and have been of the view
9 since 2011 that the guidelines are, in fact, a useful tool for
10 the Court. While I understand there is a great deal of debate
11 about the guidelines, I am of the view that they assist the
12 Court and courts across the country in reducing sentencing
13 disparities. That does not mean that I or anybody else should
14 accept the guidelines as necessarily setting forth what is
15 appropriate for a particular defendant for a particular set of
16 circumstances, but it is indicative of my view that they are
17 useful.

18 With that said, ultimately, what I have to do is focus
19 on language that Mr. Cohn referenced, which is what kind of
20 sentence would be sufficient, but not greater than necessary,
21 for a particular defendant for a particular crime.

22 There are a variety of factors that the Court has to
23 analyze in making that determination. The federal sentencing
24 3553(a) factors guide the Court. I have to look at the nature
25 and the circumstances of the offense. How serious was the

I8EHRods

1 offense? What was the offense doing to our community or
2 communities, whether it's a community writ large in terms of
3 the country, in terms of certain specific communities? What
4 was happening? Why was the defendant engaged in that offense
5 in terms of the offense itself? That goes to his history and
6 characteristics. What do I know about him in terms of why he
7 did it and whether or not there's any likelihood that he would
8 do it again, and whether I think there needs to be a portion of
9 the sentence or an entirety of the sentence that will speak to
10 something that we call personal deterrence. It can also be
11 taken as incapacitation under certain circumstances.

12 Deterrence, personal deterrence, can be short term or it can be
13 longer term, depending upon one's judgment of character.

14 In addition to that, one looks at issues such as
15 general deterrence. Does a particular sentence indicate to
16 others that might be inclined to engage in such conduct that
17 this particular conduct will be treated with a particular level
18 of seriousness, which will assist us as a society in generally
19 deterring the conduct here or similar conduct that would be
20 like it?

21 I also have to look at what is a just sentence, what
22 type of sentence will promote respect for the law; whether
23 there are any educational, medical, correctional, or vocational
24 treatment indicated by a particular sentence. And ultimately,
25 again, we're always coming back to what is a sufficient, but

I8EHRodS

1 not greater than necessary, sentence.

2 I also in this kind of case take into consideration
3 whether other sentences for other codefendants are somehow
4 indicative of what a sentence that would be just here would be.
5 I would note that Mr. Urbina who was referenced in the defense
6 submission stands in a very different set of circumstances from
7 this defendant, both in terms of his level of involvement and
8 his position in the overall organization, and then the fact
9 that Mr. Urbina pled guilty pursuant to and was sentenced
10 pursuant to a cooperation agreement. Mr. Urbina did not have a
11 set of circumstances that is similar to this defendant, so he
12 was given a particular sentence that reflected his
13 characteristics as a person, as well as the nature and the
14 circumstances of his involvement in the offense.

15 Let me then go back to what we have here in terms of
16 my analysis of these factors. This was an incredibly serious
17 two offenses. They're separate crimes of conviction. The law
18 treats each crime of conviction separately. They carry
19 separate penalties, and they have separate indications as to
20 the type of criminal conduct that is being addressed by each of
21 them.

22 Here, we have an individual, Mr. Jesus
23 Rodriguez-Jimenez, who was a major money launderer for
24 narcotics traffickers, to the tune that we know of, of
25 \$284 million. That's \$284 million of money laundering that at

I8EHRods

1 least in part, and in significant part, was associated with
2 narcotics trafficking. There may have been other forms of
3 unlawful activity, but certainly narcotics trafficking was a
4 very significant part of that.

5 We know that narcotics-trafficking organizations, to
6 focus on that aspect of it, require in order for them to
7 succeed that there be ways in which the funds, the money that
8 is obtained from narcotics trafficking, can be laundered so
9 that the narcotics traffickers can then utilize those funds
10 with lessened risk. That is part of what makes the machinery
11 of narcotics trafficking go around. We know that narcotics
12 traffickers do not engage in narcotics trafficking just for the
13 fun of it. They engage in it as a business. These are
14 large-scale traffickers, and that part of the business requires
15 a banking operation, and Mr. Rodriguez-Jimenez was a banking
16 operation for a large-scale set of narcotics trafficking that
17 is laid out in the PSR.

18 The conduct here, the seriousness of the conduct, is
19 underscored not only by the very, very significant dollar
20 amount that is associated with it but also with how brazen the
21 conduct was. What is set forth in the PSR is really conduct
22 which is breathtaking in how brazen it was.

23 Mr. Rodriguez-Jimenez kept records of his conduct,
24 detailed, detailed records of the money flow and of the way in
25 which his organization was running funds. And it was

I8EHRodS

1 complicated. It was done through a variety of fronts that were
2 assisting with this, and it is a level, magnitude of money
3 laundering and conspiracy to engage in monetary transactions in
4 criminally derived property, both of those crimes, that is
5 incredibly serious and needs to be treated with a level of
6 seriousness commensurate with that from the Court.

7 I do note and have kept in mind and have given a great
8 deal of consideration to the number of proffer sessions that
9 the defendant had with the government. That is always of
10 significance to the Court and is so here. There are, however,
11 a number of reasons why the government may or may not choose,
12 ultimately, to sign a defendant up as a cooperator. What is
13 important to me is that, ultimately, this defendant is not
14 being signed up as a cooperator. He is being sentenced today
15 for his conduct, and it is up to me to determine whether or
16 not, assuming that he was being truthful in his cooperation,
17 whether or not that cooperation would indicate a particular
18 sentence that is of such a low level as requested by the
19 defense or something else.

20 It is worth, then, pausing on the reasons why
21 individuals and, in particular, I believe,
22 Mr. Rodriguez-Jimenez, the characteristics displayed overall in
23 the PSR, why it does not necessarily indicate to me a dramatic
24 change of heart. I also should say against this I'm mindful of
25 all of the letters of support for Mr. Rodriguez-Jimenez.

I8EHRods

1 Cooperation agreements are often a reasonable desired outcome
2 for a defendant looking at what is otherwise an incredibly
3 serious sentence. It can often be a very rational decision to
4 try to cooperate with the government to get a sentencing
5 reduction. It does not mean, as a defense attorney who tried
6 several cases in front of me used to say on cross-examination,
7 that proffering with the government and giving information to
8 the government is a car wash for the soul. It doesn't
9 necessarily mean, in other words, that a defendant by
10 proffering, even proffering truthful information, which I
11 accept here occurred, it does not mean that the defendant does
12 not remain an individual who would revert to criminal behavior
13 if given the opportunity.

14 What it does indicate is that there are very few tools
15 in the toolbox to obtain a lower sentence. That is one of
16 them. Often it works; sometimes it doesn't work. It didn't
17 work here. In other words, cooperation, a cooperation
18 agreement, was not obtained here. The government certainly
19 engages in cooperation agreements with sufficient frequency
20 that the Court does not take the lack of a cooperation
21 agreement here as some sort of irrational move by the
22 government. The government, then again, just exercised its
23 unilateral prosecutorial discretion.

24 So from my perspective, I can assume that the
25 defendant proffered, that he cooperated, that he gave truthful

I8EHRods

1 information, but I can still believe that that does not change
2 my overall analysis that he would nonetheless, given the scale,
3 the magnitude of the operation, the sophistication with which
4 the operation was run, the level of detail, the level of
5 organization that he had, it does not indicate to me that he
6 necessarily is suddenly going to change his ways.

7 My sentence, and as I think about also the history and
8 characteristics of Mr. Rodriguez-Jimenez, my sentence needs to
9 account for what I believe, therefore, is a very significant
10 need for this sentence to indicate to Mr. Rodriguez-Jimenez
11 that this kind of conduct is over, that his participation in
12 this criminal organization is at an end, that it's at a
13 long-term end, that it should not and will not go on, that will
14 have, at least one would hope, a significant impact on the
15 organization, given the level of Mr. Rodriguez-Jimenez.

16 Of course, there are always often others who will try
17 to fill the void, but it does appear that Mr. Rodriguez-Jimenez
18 had particular skills in his organizational abilities and his
19 abilities to run large-scale organizations that will mean that
20 when he is taken off the streets, as he has been, that there
21 will be an impact. Therefore, the personal deterrent aspects
22 of the sentence are of some significance.

23 The Court also believes that, given the magnitude of
24 the sentence, given the magnitude of the sentence, there will
25 also be a general deterrent aspect to it. In other words, that

I8EHRods

1 the conduct here was of a nature that needs to be treated with
2 great seriousness. And others who might be likely to engage in
3 such conduct or may be engaging in it now, indeed may be
4 fulfilling Mr. Rodriguez-Jimenez's role today for him, in place
5 of him in a similar organization or even the same organization,
6 will understand that this kind of crime will carry a very, very
7 serious sentence. So there is a way in which this sentence
8 will carry a general deterrent purpose as well.

9 I should say that, given the way in which this
10 organization was run, it is essential for the Court to send a
11 very serious message, and I would expect that word would get
12 out. In other words, I would expect that the wide-sweeping
13 individuals who may continue to be involved in this kind of
14 organization, the broad group of individuals, will learn of
15 this sentence and will hear of it; and, therefore, that the
16 general deterrent purpose that the Court intends to be filled,
17 in part by this sentence, will, in fact, occur.

18 So I do think of this sentence as having a personal
19 deterrent aspect, a general deterrent aspect of recognizing the
20 seriousness of the offense and of doing justice to the crime
21 which occurred here, and that is, the crime is not only the
22 crimes of conviction but ultimately having an impact on
23 narcotics traffickers who will understand that at least a
24 portion of their organization that they rely upon generally, if
25 it is found and recognized and able to be prosecuted, will be

I8EHRodS

1 dealt with with the utmost seriousness.

2 Accordingly, under all of the factors of 3553(a),
3 taking into consideration the offenses of conviction, which
4 again I take as two separate offenses, and also recognizing the
5 history and the characteristics of this particular individual
6 before me, having read all of his letters and having recognized
7 his attempts at proffering with the government, it is my very
8 carefully considered judgment that a sentence at the statutory
9 maximum for each of the two counts of conviction is sufficient,
10 but not greater than necessary, here. That is, Count One
11 carries a maximum sentence of ten years' imprisonment. That's
12 120 months. Count Three carries a separate 20-year sentence,
13 that is 240 months. It is my intent to pronounce a sentence
14 for those two counts of conviction, and the sentences imposed
15 will run consecutive to one another. That is 120 months on
16 Count One and 240 months on Count Three. That is for a total
17 of 360 months, or 30 years' imprisonment.

18 I am not going to impose a separate period of
19 supervised release because the defendant will be deported.
20 Therefore, supervised release, from the Court's perspective,
21 ultimately is unnecessary.

22 I do, however, impose a \$200 mandatory special
23 assessment. There is also a consent order of forfeiture in the
24 amount of \$284 million, and the Court does order forfeiture in
25 the amount and on the terms that have been consented to. I

I8EHRods

1 have signed the order of forfeiture.

2 The Court is not going to impose restitution. There's
3 no separate restitution being sought.

4 I'm not going to impose a separate fine. I do
5 acknowledge that probation had sought a separate fine.
6 However, the Court does not view the fine as particularly
7 useful here given the magnitude of the forfeiture order.

8 Let me just say that the possibility of this duration
9 of a sentence was specifically discussed at the plea. I took
10 the plea myself, and I review and always review very carefully
11 during the plea, during pleas, what this could mean. That
12 there would, for instance, be the possibility of this kind of
13 sentence being imposed.

14 Indeed, when reviewing the appeal rights that are
15 waived, the Court always pauses in particular, I always
16 personally pause in particular on what is being waived. Here,
17 there was a waiver of any appeal or seeking a sentence
18 modification of any sentence that is up to and including the
19 360-month sentence that I have imposed. Accordingly, I just
20 want there to be an acknowledgment on the record that the plea
21 transcript should also be reviewed in connection, as of course
22 it would be, if there's any appeal taken.

23 Is there any legal or other reason why sentence should
24 not be imposed as stated, Mr. Falk?

25 MR. FALK: No, your Honor.

I8EHRods

1 THE COURT: Mr. Cohn?

2 MR. COHN: Apart from what's already been said in the
3 record, no, your Honor.

4 THE COURT: All right. The Court does impose sentence
5 as stated.

6 Now, having imposed the sentence, I will say that
7 there are also -- I believe there's an open count, Mr. Falk.

8 MR. FALK: Yes, your Honor. We would move to dismiss
9 that count.

10 THE COURT: That count is dismissed, the open count.
11 I think it's only one count. Count Two is dismissed. Any open
12 counts are hereby dismissed.

13 Now, you have a right to appeal,
14 Mr. Rodriguez-Jimenez. You've waived a number of appeal rights
15 in connection with your plea, but it's not my place to tell you
16 whether you have any bases for appeal. It will be up to you to
17 determine whether or not you want to seek to appeal. If you
18 do, you must file any notice of appeal within 14 days of the
19 filing of the judgment of conviction. If you cannot afford the
20 cost of appeal, you can apply to have those costs waived.
21 That's called proceeding *in forma pauperis*, and you have a
22 right to proceed in that manner.

23 I say the appeal right because you have, as every
24 defendant has, a right to appeal. I do note, however, that you
25 have waived your right to seek a sentence modification of any

I8EHRods

1 sentence within or below the 360 months that I have now
2 imposed.

3 All right. Folks, anything further?

4 MR. FALK: No, your Honor.

5 MR. COHN: Your Honor, because the proceedings
6 discussed Mr. Rodriguez-Jimenez's cooperation, we'd ask that
7 the transcript be sealed.

8 THE COURT: I am going to deny the sealing because
9 there was such a significant issue here as part of this
10 proceeding, there has been such a significant issue in
11 connection with whether or not the Court was giving appropriate
12 attention to this. The duration of the sentence is significant
13 enough. The details of the cooperation, that letter shall
14 remain under seal. I have specifically not gone into the
15 entire array of details. Therefore, what it means and what
16 kind of significance it may have to anyone, I think, shall
17 remain under seal. However, this transcript shall not. We've
18 been quite careful.

19 Thank you. We're adjourned.

20 (Adjourned)